DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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In the Matter of the Joint Application of NorthWestern Corporation and Babcock & Brown Infrastructure Limited, BBI US Holdings Pty Ltd., BBI US Holdings II Corp., and BBI Glacier Corp. For Approval on the Sale and Transfer of NorthWestern Corporation Pursuant to a Merger Agreement	)))))))	UTILITY DIVISION DOCKET No. D2006.6.82

Direct Testimony
of
John W. Wilson
on Behalf
of
The Montana Consumer Counsel

PUBLIC VERSION

[PROTECTED MATERIAL REDACTED]

December 15, 2006

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I. QUALIFICATIONS

Q. PLEASE STATE YOUR NAME, OCCUPATION, AND ADDRESS.

A. My name is John W. Wilson. I am President of J.W. Wilson & Associates, Inc. Our offices are at 1601 North Kent Street, Suite 1104, Arlington, Virginia, 22209.

Q. PLEASE OUTLINE YOUR EDUCATIONAL BACKGROUND.

A. I hold a B.S. degree with senior honors and a Masters Degree in Economics from the University of Wisconsin. I have also received a Ph.D. in Economics from Cornell University. My major fields of study were industrial organization and public regulation of business, and my doctoral dissertation was a study of utility pricing and regulation.

Q. HOW HAVE YOU BEEN EMPLOYED SINCE THAT TIME?

A. After completing my graduate education I was an assistant professor of economics at the United States Military Academy, West Point, New York. In that capacity, I taught courses in both economics and government. While at West Point, I also served as an economic consultant to the Antitrust Division of the United States Department of Justice.

After leaving West Point, I was employed by the Federal Power Commission, first as a staff economist and then as Chief of FPC's Division of Economic Studies. In that capacity, I was involved in regulatory matters involving most phases of FPC regulation of electric utilities and the natural gas industry. Since 1973 I have been employed as an economic consultant by various clients, including federal, state, provincial and local governments, private enterprise and nonprofit organizations. This work has pertained to a wide range of issues concerning public utility regulation, insurance rate regulation, antitrust matters and economic and financial analysis. In 1975 I formed J.W. Wilson & Associates, Inc., a Washington, D.C. corporation.

Q. WOULD YOU PLEASE DESCRIBE SOME OF YOUR ADDITIONAL PROFESSIONAL ACTIVITIES?

A. I have authored a variety of articles and monographs, including a number of studies dealing with utility regulation and economic policy. I have consulted on regulatory, financial and competitive market matters with the Federal Communications Commission, the National Academy of Sciences, the Ford Foundation, the National Regulatory Research Institute, the Electric Power Research Institute, the U.S. Department of Justice Antitrust Division, the Federal Trade Commission Bureau of Competition, the Commerce Department, the Department of the Interior, the Department of Energy, the Small Business Administration, the Department of Defense, the Tennessee Valley Authority, the Federal Energy Administration, and numerous state and provincial agencies and legislative bodies in the United States and Canada.

Previously, I was a member of the Economics Committee of the U.S. Water Resources Council, the FPC Coordinating Representative for the Task Force on Future Financial Requirements for the National Power Survey, the Advisory

Committee to the National Association of Insurance Commissioners (NAIC) Task Force on Profitability and Investment Income, and the NAIC's Advisory Committee on Nuclear Risks.

In addition, I have testified as an expert witness in court proceedings dealing with competition in the electric power industry and on regulatory matters before more than 50 Federal and State regulatory bodies throughout the United States and Canada. I have also appeared on numerous occasions as an expert witness at the invitation of U.S. Senate and Congressional Committees dealing with antitrust and regulatory legislation. In addition, I have been retained as an expert on regulatory matters by more then 25 State and Federal regulatory agencies. I have also participated as a speaker, panelist, or moderator in many professional conferences and programs dealing with business regulation, financial issues, economic policy and antitrust matters. I am a member of the American Economic Association and an associate member of the American Bar Association and the ABA's Antitrust, Insurance and Regulatory Law Sections.

II. OVERVIEW OF TESTIMONY

Q. ON WHOSE BEHALF ARE YOU TESTIFYING IN THIS PROCEEDING?

A. I am presenting testimony in this proceeding on behalf of the Montana Consumer Counsel (MCC).

Q. WHAT IS THE MAIN INQUIRY OF YOUR TESTIMONY?

A. My testimony focuses primarily on the overriding question of whether and how the proposed merger may affect NWE's ability to provide adequate electric and gas utility service at just and reasonable rates. It is my understanding that the Commission has consistently stated that its authority to review mergers, acquisitions and other transfers of corporate control arises from its duty to assure that utility customers receive adequate service at reasonable rates.

An important part of this inquiry is to understand how BBI plans to support its proposed $2.2 billion acquisition of a utility with a $1.4 billion rate base and to determine whether that plan is good for utility ratepayers.

As I will explain in detail below, BBI plans to support the financing of its acquisition by [redacted].

Q. WHERE DOES BBI PLAN TO GET THE CASH FLOW TO FUND THESE EQUITY DISTRIBUTIONS?

A. Ultimately a utility's cash flow must come from the rates it charges its customers. Specifically, in this case, BBI plans for NWE to benefit from four unusual practices to fund its planned equity distributions:

[redacted]

[redacted]

[redacted]

[redacted]

Q. HAVE YOU INCORPORATED OTHER CONSIDERATIONS INTO YOUR EVALUATION OF THE IMPACT OF THE PROPOSED MERGER ON NWE'S ABILITY TO PROVIDE ADEQUATE SERVICE AT REASONABLE RATES?

A. Yes, I have. At this point in the history of utility service in the State of Montana, consumers have been through three seismic events in less than a decade. The first of these events was the sale of Montana Power Company's generation plants to PPL, which ultimately resulted in substantially higher power supply costs. The second event was the sale of Montana Power's transmission and distribution assets to NorthWestern Corporation in February 2002. This event paralleled the transformation of Montana Power into TouchAmerica Holdings, and TouchAmerica's rapid descent into bankruptcy. The third seismic event was the Chapter 11 bankruptcy of NorthWestern itself, resulting in large measure from improvident diversification into propane and home appliance sales and a net-based application service provider enterprise. The NorthWestern bankruptcy proceeding, from September 2003 through October 2004, resulted in a reorganization based on NorthWestern's return to its core competency -- operating a utility.

As NorthWestern's Chief Executive Officer, Michael Hanson, explained in his testimony, NWE is the largest electric utility in the State of Montana, serving approximately 316,000 electric customers at retail. NorthWestern also operates a natural gas pipeline system and distributes natural gas to nearly 170,000 customers in Montana as well as supplying several smaller gas distribution companies that provide service to another 30,000 customers. NWE supplies both natural gas and electricity to "default supply" customers (*i.e.*, those customers who do not yet have competitive supply options). Its stability and its ability to function effectively in fulfilling its utility obligations have been recognized as vitally important to the well being of Montana's consumers.

With these considerations in mind, in evaluating the potential impacts of this proposed merger on NWE's ability to provide adequate service at rates that are reasonable and just, I have examined the proposed acquisition in light of (1) the Commission's October 18, 2004 Statement of Factors for Evaluating Proposals to Acquire NorthWestern Energy (Docket No. N2004.10.166), and (2) the ringfencing, structural, financial and other related matters discussed in the Commission's July 20, 2004, Consent Order in Docket No. D2003.8.109 ("the Financial Investigation Docket"). I have also reviewed the issues preliminarily identified in the MCC's intervention in this case in light of the information developed through discovery in this case.

Q. PLEASE EXPLAIN BRIEFLY THE TWO DOCUMENTS TO WHICH YOU REFERRED -- THE STATEMENT OF FACTORS AND THE FINANCIAL INVESTIGATION CONSENT ORDER.

A. The Consent Order is the result of an investigatory proceeding commenced by the Commission, at the request of the Consumer Counsel, on August 21, 2003, shortly before NorthWestern filed its Chapter 11 petition. That investigatory proceeding sought to "develop and enforce appropriate regulatory controls . . . as necessary to ensure that various inter-affiliate relationships, transfers, and transactions between [NorthWestern Corporation] and the electric and natural gas utility operations lodged in its NorthWestern Energy division are not operating, and do not operate in the future, to prejudice the ability of NWE to furnish reasonably adequate service and facilities at reasonable and just charges, as required by §69-3-201, MCA." D2003.8.109 (Order No. 6505 (August 21, 2003)). The Consent Order finally entered by the Commission on July 8, 2004, with the approval of the United States Bankruptcy Court for the District of Delaware, establishes structural (ring fencing), financial and other controls which were developed to ensure that NWE's ability to fulfill its utility service obligations under Montana law would not be impaired in the future. As I will discuss the Consent Order later in this testimony, I have attached a copy to this testimony as Exhibit JW-6 to facilitate reference.

The Statement of Factors is an expression of policy by the Commission, issued on the eve of NorthWestern's emergence from bankruptcy, which lists eight non-exclusive factors as "neutral, transparent, and consistent information" about considerations the Commission finds to be material in connection with a proposal to acquire NorthWestern. The eight factors are: (1) Financial Strength and Capability, (2) Energy Supply, (3) Infrastructure, (4) Demonstrable Montana Focus, (5) Utility Focus, (6) Customer Focus, (7) Utility Management Experience, and (8) Effective Functioning in the Montana Constitutional, Statutory and Regulatory Framework. The Commission also underscores in the Statement of Factors that the Financial Investigation Consent Order "represents the foundation for an acceptable acquisition."

Q. WHAT OTHER MATERIALS HAVE YOU REVIEWED IN YOUR EVALUATION OF THE PROPOSED MERGER?

A. I have reviewed the Joint Applicants' filing and their responses to information and data requests. As discussed in detail in the "Protected," non-public portions of this testimony, I have also focused extensively on BBI's financial plans and expectations for NWE which are set forth in BBI's acquisition model. As I will explain, the results of this acquisition model, which was a key tool in BBI's decision to acquire NWE at the agreed upon price and in arranging financing, are the clearest and most detailed indication that we have of BBI's expectations and intentions as the prospective new owner of NWE. BBI's acquisition model lays out in detail BBI's expectations with respect to the financial operations of the company, quarter-by-quarter, from 2007 through 2046. Expected financing, dividend payouts, capital expenditures, expected earnings and all revenue and expense expectations are covered. Proprietary concerns have precluded access to a "working" version of the model, *i.e.*, a copy of the model in executable computer format that is capable of being run to test a range of assumptions. As a result, I have not been able to operate, test or evaluate the workings of the model, although I requested and BBI provided an alternative model run eliminating certain large new capital expenditure projects as described in my testimony below. I have been limited to reviewing approximately 18,000 pages of printouts of model runs provided by BBI. I believe that I have learned and understand the model printouts sufficiently to be confident of the conclusions presented here. However, because of the limited review that has been permitted, I cannot be certain that I have identified all issues that may have come to light had I been able to review and work with the operating model.

BBI has informed me that they have not provided NWE with the acquisition model (again, because of proprietary concerns prior to merger consummation) or even the runs that were provided to me. Thus, it is possible that NWE personnel are not yet fully familiar with BBI's financial operating expectations or with all of the observations that I explain in the Protected, non-public portions of this testimony. Nonetheless, both because the model has been a key tool in BBI's decision to acquire NWE at the agreed upon price and in arranging acquisition financing and because BBI will control critical cash flows, such as payouts to equity holders, the model is the clearest and most detailed indication that we have of BBI's expectations and intentions as the prospective new hands-on owner of NWE.

The Commission should therefore give careful consideration to the expectations and intentions revealed in the model in determining whether and under what conditions it will approve the proposed merger.

Q. WHAT CONCLUSIONS DO YOU REACH?

A. My primary conclusions are that (1) the acquisition, as proposed, is likely to affect adversely NWE's ability to provide adequate utility service at rates that are reasonable and just, and (2) the acquisition, as proposed, offers little in the way of concrete offsetting benefits to Montana consumers. NorthWestern's current management team has performed well in restoring NorthWestern to financial health and functionality as a utility following the company's emergence from Chapter 11 protection on November 1, 2004. The main concrete benefit of the BBIL acquisition, according to NorthWestern's Chief Executive Officer, is that it would free company management from "the distraction and uncertainty of investors with short-term monetary goals" (Direct Testimony of Michael J. Hanson at p. MJH-2)[1]. There is no concrete indication how the "financial resources" of BBIL (which, with a market capitalization of $1.7 billion is only slightly larger in a financial sense than NorthWestern), or its investment bank

[1] I am uncertain whether this concern remains as critical today as it was at the time Mr. Hanson's testimony was prepared, as I believe that there may have been significant stockholders changes in the interim.

parent Babcock & Brown, would make any specific positive difference to NorthWestern's ability to provide utility service to Montana's consumers. For example, [redacted].

My third conclusion is that any Commission authorization for BBI's planned acquisition, ownership and control of NWE should be conditioned on specific regulatory provisions to protect and assure the ability of the post-acquisition utility to provide adequate service at rates that are reasonable and just. These include provisions to impose reasonable regulatory supervision on the payout of utility company funds to its controlling owner, controls and procedures to limit new debt financing and to maintain appropriate capital structures, regular periodic rate reviews and the insulation of consumers from the acquisition premium that BBI has agreed to pay for NWE.

Q. WHAT CONCLUSIONS DO YOU REACH FROM YOUR REVIEW OF BBI'S ACQUISITION MODEL?

A. Because a large portion of the discovery made available to the Consumer Counsel in this case was made available on a "protected" basis, I can discuss my conclusions publicly only on a limited basis from information available through the public record. Most of the critical evidence that I am presenting is contained in confidential sections of my testimony.

My primary conclusions regarding the information contained in the acquisition model can be grouped into two categories. First, [redacted]

[redacted].

The second group of conclusions relate to the payouts to equity holders (from NWE to BBI "holdco") that are part of BBI's business strategy in its other enterprises throughout the world. Specifically, BBI appears to make a practice of distributing 100 percent of "free cash flow" as corporate overheads, management fees and dividends to shareholders. I have attached as Exhibit JW-7 an excerpt from a BBI investor presentation from June of this year which illustrates the company's dividend distribution practice. The excerpt states: "Key attributes: distributions paid from operating cash flows, not capital restructuring initiatives,"[2] and illustrates BBI's practice of paying out 100 percent of cash flow from operations as either management fees or dividends. This practice produces substantially greater payouts to shareholders and to corporate affiliates than is the norm in public utility financial practices in the United States. The customary public utility distribution practice in the United States typically involves the distribution of a portion of net earnings (a reasonable average is in the range of 60 to 70 percent of net earnings), which is a smaller subset of operating cash flow.

[redacted]

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2 [redacted].

[redacted]. This raises a serious concern for the adequacy of service, as it is also typical for public utilities to fund reserves out of retained earnings, and the over distribution of earnings would make it unlikely that an adequate reserve would be maintained. Indeed, BBI's projected financial statements for NWE show [redacted].

Levels of contemplated distributions are projected in the BBI acquisition model. [redacted]:

Projected Equity Distributions
($ Millions)

	NWE 2006 L.R. Forecast	BBI Acquisition Model Forecast
2007	[redacted]	[redacted]
2008	[redacted]	[redacted]
2009	[redacted]	[redacted]
2010	[redacted]	[redacted]

As I will explain in detail below, BBI's projected equity distributions are [redacted]

[redacted].

Q. SHOULD THESE CONCLUSIONS BE A CONCERN TO REGULATORS?

A. Yes. The large new forecasted debt balance could become an unexpected burden to NWE's ratepayers if the transmission service markets and revenues, as assumed in the BBI acquisition model for new transmission investments, do not occur as the model contemplates. As reflected in the model, [redacted].

Also, while the risk of equity distributions not working out as planned should be fundamentally an investor concern, [redacted]

[redacted]. This compares with an equity payout of 63% of earnings as forecasted by NWE in its January 2006 Long Range Management forecast and a 63% average forecast (by Value Line) for comparable electric utilities. I am unaware of any other U.S. electric or gas utility that has ever achieved this sustained level of earnings payout, and I am unaware of any other U.S. utility that expects to do so in the future. Although the lack of realism that these assumed equity payouts may represent should be a stockholder risk and not a risk to NWE's ratepayers, such aggressive payout expectations signal a probable need for strong regulatory safeguards against asset depletion at the operating company level that may imperil service cost and quality in ways not reflected in BBI's optimistically structured acquisition model results.

III. PROPOSED CONDITIONS

Q. WHAT SPECIFIC CONDITIONS WOULD YOU RECOMMEND THAT THE COMMISSION IMPOSE ON AUTHORIZATION FOR THE ACQUISITION, IN LIGHT OF YOUR EVALUATION?

A. I recommend that the Commission adopt seven specific conditions to any authorization for the acquisition of NorthWestern by BBI. The seven specific conditions are:

1. A strict prohibition against the merged company recovering in retail rates, directly or indirectly, in any manner or by any means, any portion of the approximately $700 million premium over book value proposed to be paid

for the acquisition of NorthWestern, unless such recovery is expressly authorized by the Commission upon application demonstrating specific and concrete benefits to Montana consumers resulting from the payment of such premium.

2. None of the transaction and transition costs incurred by BBI and NorthWestern shall be deferred as a regulatory asset for future recovery from ratepayers. The costs should be absorbed exclusively by the shareholders of each of the parties to the acquisition.

3. A requirement for prior Commission authorization for the distribution, directly or indirectly, from NorthWestern to its owners, affiliates or to stockholders of affiliates any amount in excess of 100 percent of its net earnings from utility operations in any year.

4. A requirement that the merged company use financing that is neither secured by NorthWestern's utility assets nor guaranteed in any manner by its retail utility revenues (*i.e.*, financing that is non-recourse to NorthWestern and its customers) for the development of any capital project having a principal purpose other than the provision of adequate service to retail public utility consumers.

5. Maintaining in place the existing structural and financial measures, intercorporate and affiliate transactions requirements, reporting and disclosure requirements, and infrastructure audit compliance requirements

from Order No. 6505e (the Financial Investigation Consent Order), subject to modification of the following provisions:

a. Changes to the definition of the term "Parent Company" are required throughout Ordering Paragraph C.1 (structural measures) and C.2 (financial measures) in order to ensure that, after consummation of the acquisition, NorthWestern remains the entity vested with title to and control over the public utility assets used to serve Montana consumers;

b. Ordering Paragraph C.3.a should be modified to reflect a basis for determining consolidated book equity and consolidated total capitalization that is meaningful as a regulatory tool in the context of the post-acquisition corporate structure, and the financial reporting requirements to which that corporate structure will be subject.

6. A requirement for periodic (every two years) submission by NorthWestern of rate informational filings conforming to the requirements of Ordering Paragraph B.1 of Order 6505e (including responding to discovery) for rate review for the initial ten years following the merger, to ensure against excessive rates.

7. A requirement for contemporaneous public filing with the Commission of financial disclosure documents filed by NorthWestern's parent/affiliate BBIL in the Australian Stock Exchange or the Australian Securities and Investments Commission.

Based on my analysis, as more fully explained in the "Protected" non-public portions of my testimony, these are the minimum conditions necessary to protect the interest of Montana's utility consumers in the maintenance of adequate service at rates that are reasonable and just.

IV. BBI'S PROJECTED DEBT INCREASE

Q. PLEASE SUMMARIZE BBI'S PROJECTED DEBT INCREASE.

A. In addition to $736 million of existing NWE debt obligations that BBI will assume, the holding company plans to borrow an additional [redacted] million to partially fund the acquisition of NWE's equity. The remaining [redacted] million of the agreed upon equity purchase price will, according to BBI's current acquisition plans, be funded by an as yet unaccomplished issuance of new equity capital.[3] Assuming that BBI is successful in fully funding this remaining $930 million equity commitment with new equity issuances, the starting consolidated capital structure will be approximately [redacted].

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[3] These amounts, [redacted] million of new debt and [redacted] million of equity which are the amounts used in BBI's acquisition model, differ somewhat with the $505 million of new debt financing and $987 million of equity specified in the testimony of BBI witness Garland, in this case. Total debt and equity capitalization at acquisition of [redacted] billion, as stated in the model, is also slightly [redacted] than Mr. Garland's estimate of $2.228 billion needed to complete the merger. See Garland's direct testimony at pages 7-8.

Projected Consolidated Capital at Acquisition

	$ million	%
Equity Capital	[redacted]	[redacted]
NWE Debt	[redacted]	[redacted]
BBI holdco Debt	[redacted]	[redacted]
	[redacted]	[redacted]

Projected NWE Capital Structure at Acquisition [1]

	$ million	%
Book Equity	[redacted]	
Less Acquisition Premiums	[redacted]	
Utility Equity Capital	[redacted]	[redacted]
Debt	[redacted]	[redacted]
	[redacted]	[redacted]

[1] Adjusted to remove acquisition premium goodwill.

In contrast to [redacted] billion of consolidated debt and equity capitalization, the Company will initially have [redacted] billion of net property plant and equipment, which is generally in line with NWE's debt and equity capitalization adjusted to remove acquisition premium "goodwill".

Between the start of 2007 and the end of 2009, BBI intends [redacted]. Thus, at the end of

2009, the projected consolidated capital structure will be approximately [redacted] equity and [redacted] debt, and the projected NWE utility capital structure (i.e., excluding acquisition premiums) will be approximately [redacted] equity and [redacted] debt.

Projected Consolidated Capital at 12/31/09

	$ million	%
Equity Capital	[redacted]	[redacted]
NWE Debt	[redacted]	[redacted]
BBI holdco Debt	[redacted]	[redacted]
	[redacted]	[redacted]

Projected NWE Capital Structure at 12/31/09 [1/]

	$ million	%
Book Equity	[redacted]	
Less Acquisition Premiums	[redacted]	
Utility Equity Capital	[redacted]	[redacted]
Debt	[redacted]	[redacted]
	[redacted]	[redacted]

[1/] Adjusted to remove acquisition premium goodwill.

BBI then plans to [redacted]. At

that time, consolidated equity would [redacted] and consolidated debt would [redacted]. At the NWE opco level utility equity would be [redacted] and debt would be [redacted].

Projected Consolidated Capital at 3/31/10

	$ million	%
Equity Capital	[redacted]	[redacted]
NWE Debt	[redacted]	[redacted]
BBI holdco Debt	[redacted]	[redacted]
	[redacted]	[redacted]

Projected NWE Capital Structure at 3/31/10 [1/]

	$ million	%
Book Equity	[redacted]	
Less Acquisition Premiums	[redacted]	
Utility Equity Capital	[redacted]	[redacted]
Debt	[redacted]	[redacted]
	[redacted]	[redacted]

[1/] Adjusted to remove acquisition premium goodwill.

As compared with 2007, when [redacted] of the consolidated debt was at the NWE opco level (and [redacted] at BBI holdco), as of 2010, [redacted] of total debt is projected to be at NWE (and [redacted] at BBI holdco). From then forward, both debt and equity are projected to [redacted]

[redacted]. At the NWE utility level, capital leverage or "gearing" is [redacted] of the total.

Projected Consolidated Capital at 12/31/23

	$ million	%
Equity Capital	[redacted]	[redacted]
NWE Debt	[redacted]	[redacted]
BBI holdco Debt	[redacted]	[redacted]
	[redacted]	[redacted]

Projected NWE Capital Structure at 12/31/23 [1/]

	$ million	%
Book Equity	[redacted]	
Less Acquisition Premiums	[redacted]	
Utility Equity Capital	[redacted]	[redacted]
Debt	[redacted]	[redacted]
	[redacted]	[redacted]

[1/] Adjusted to remove acquisition premium goodwill.

Q. WHAT RATES OF RETURN DOES BBI PROJECT ON THESE PERIODS?

A. Between 2007 and 2024 NWE's earnings as a percentage of consolidated equity is

[redacted].

Q. WHY IS NWE'S DEBT PROJECTED TO INCREASE FROM $736 MILLION IN 2007 TO [redacted] IN 2009?

A. The primary reason for this [redacted] increase in debt is the assumed debt funding of new interstate transmission investments [redacted] plus [redacted] plus [redacted].

Q. WHAT IS THE RISK OF THIS DEBT FINANCING?

A. One risk of this debt financing is the [redacted]. The Commission's Consent Order in the Investigation Docket related to NWE's last bankruptcy provided that NorthWestern's <u>consolidated</u> total book equity as a ratio to its <u>consolidated</u> total capitalization should at no time decline to less than 40%. Under BBI's plan, consolidated equity would [redacted]. At the NWE utility operating level (adjusted for acquisition premiums) [redacted]. While the Consent Order contemplated that NWE utility operations (and consolidation) would be at the parent level, the reversal proposed here by the Joint Applicants (putting NWE utility operations at the subsidiary level) should not change (or provide a loophole around or through) the clear intent of this capital structure limitation. The need for this limitation is especially evident when one realistically recognizes that the [redacted].

Another risk of this projected increase in NWE's debt financing is that the presumed cash flows from the Montana-Idaho and 500KV Colstrip-NW upgrade transmission projects do not occur as projected. As stated above, BBI assumed that these investments [redacted]. While I presume that NWE would not go forward with these projects unless their usage is largely subscribed in advance and a specific expected revenue stream is established, there can be no absolute assurance of the projected cash flows nor that all of the lucrative assumptions will actually occur over time as anticipated in BBI's projections. Because of this uncertainty and the very large debt obligations to be incurred, I believe that the Commission would want to condition any approval so that the Company's existing retail ratepayers are not exposed to these potential business or financing risks.

Q. IS THERE A STRAIGHTFORWARD REGULATORY SOLUTION TO THESE POTENTIAL PROBLEMS ASSOCIATED WITH THE

TRANSMISSION-RELATED DEBT INCREASE?

A. Yes. The Commission could condition any acquisition approval and any financing approval, and BBI and NWE could agree, that financing of the Montana-Idaho and 500KV upgrade projects would be accomplished only with non-recourse project debt financing that creates no risk exposure for NWE retail ratepayers. Indeed, NWE's current transmission rate filing at the FERC, wherein it is proposed that the cost of these projects would not be rolled into existing transmission network service rates, but that they would be used to develop rates for these projects which would apply only to project users, appears to be well designed to facilitate project financing. Assuring that project financing would be funded only by FERC-approved project rates and resulting project revenues without the possibility of any recourse for interest or debt payment to NWE's retail ratepayers is a further essential feature.[4]

V. BBI's PROJECTED EARNINGS AND EQUITY DISTRIBUTIONS

Q. WOULD BBI AND NWE ACCEPTANCE OF SUCH NON-RECOURSE PROJECT FINANCING ARRANGEMENTS FOR THE ASSOCIATED [redacted] OF NEW DEBT REFLECTED IN THE BBI ACQUISITION MODEL RESOLVE THE REMAINING ISSUES THAT YOU HAVE IDENTIFIED?

A. No. I requested and BBI provided an additional acquisition model run with the

[4] Similar non-recourse project financing may be feasible for the Colstrip 4 lease buyback for which BBI plans [redacted]. Alternatively, NWE (opco) financing may be a reasonable alternative if a commitment is made to provide generation output to NWE's default supply at cost of service prices.

projected financing, costs and revenues of the interstate transmission projects removed so that we might assess the remaining aspects of BBI's assumed operation of NWE and management of its cash flows. That analysis shows that the remaining issues continue to exist. Specifically, [redacted].

Q. PLEASE DESCRIBE THE RESULTS OF BBI'S ACQUISITION MODEL AS RUN WITHOUT THE INTERSTATE TRANSMISSION PROJECTS.

A. Although the [redacted] profitability assumed for the FERC-regulated transmission projects drops out (e.g., causing NWE's net after tax profit in 2010 to decline from [redacted] million to [redacted] million) most of the other cash flow fundamentals that were observed when the transmission projects are included remain. Most notably, as shown in page 1 of Exhibit JW-1, equity distributions [redacted] as compared to under 65% as previously forecasted (through 2010) by NWE and as projected for comparable companies.

Corresponding charts are shown on pages 2-4 of Exhibit JW-1. These assume an equity return cap of 10.75% rather than the [redacted] - - as discussed below. The chart on page 2 assumes that the cap is applied to consolidated common equity; page 3 assumes the cap is applied to equity-funded rate base, which is hypothetically assumed to be 50% of net plant less deferred income taxes[5]; page 4 assumes the cap is applied to NWE's own (opco) equity adjusted to remove acquisition premiums [redacted]. As these additional charts show, [redacted].

Q. WHAT IS SHOWN ON PAGES 5-9 OF EXHIBIT JW-1?

A. Pages 5-8 are the same as pages 1-4, except they reflect the BBI acquisition model run including the anticipated new interstate transmission projects (the Montana-Idaho line and the 500 KV Colstrip-NW upgrade). The results are much the same, again showing [redacted]. Finally, page 9 shows Value Line's projected earnings payout levels for comparable companies. While these companies are surely not perfectly comparable to NWE, (most are substantially larger), they are (or at least are among) those utilities most comparable to NWE as they are distributors of electricity (and in most cases gas), but they do not own or operate substantial electric generation[6]. These companies

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[5] 50% of net plant less deferred income taxes is [redacted], by dropping the 50% assumption and using, instead, actually projected net plant funding, the resulting indicated payout levels in relation to capped earnings would be much higher.

[6] Sempra has a small amount of nuclear generation and others may have some minor generation amounts.

have payout forecasts that are very much in line with NWE's own January 2006 forecast of about 65% for 2007-2010 and [redacted].

Q. IN YOUR VIEW, HAS BBI ADEQUATELY EXPLAINED ITS CORPORATE POLICIES AND PRACTICES IN CONNECTION WITH THE DISTRIBUTION OF OPERATING CASH FLOW TO SHAREHOLDERS

A. I do not believe so. More specifically, in response to psc-045 (b) which asked:

> b. How do the dividends which will be paid by NWE to Holdings II compare with current dividends paid to shareholders? Will dividends paid to Holdings II exceed the current level of dividends paid to shareholders?

BBI Witness Garland provided a response that could be interpreted to suggest that dividend payout policy will remain much the same has it has been:

> "... If dividends were paid solely in respect of ongoing state regulated utility operations, dividends payable to Holdings II under BBI ownership would be approximately at the same level as dividends payable to NorthWestern's current shareholders."

Likewise, in response to PSC-054, Mr. Garland stated in part:

> "Upon the acquisition of NorthWestern by BBIL... the dividend that otherwise would have been paid to NorthWestern's current shareholders will now be paid to Holdings II."

If one were to interpret Mr. Garland's answers in this regard to suggest that BBI's indicated dividend payout plans are much the same as those previously followed by NWE (and other regulated gas and electric utilities) one would [redacted].

As indicated at page 13, above, the BBI acquisition model indicates that NWE's

[redacted].

[redacted]. In other words, a correct understanding would be that according to the BBI acquisition model for NWE, if dividends are paid solely in respect of ongoing state regulated utility operations, dividends payable to Holdings II under BBI ownership would be [redacted] the level of dividends payable to NorthWestern's current shareholders.

Q. TO YOUR KNOWLEDGE, HAS ANY GAS OR ELECTRIC UTILITY IN THE U.S. EVER MAINTAINED THIS LEVEL OF DIVIDEND PAYOUT ON A SUSTAINED BASIS?

A. No.

Q. TO YOUR KNOWLEDGE, HAS ANY OTHER GAS OR ELECTRIC

UTILITY IN THE U.S. ANNOUNCED ANY PLANS OR EXPECTATIONS TO ESTABLISH THIS LEVEL OF DIVIDEND PAYOUT IN THE FUTURE?

A. No.

Q. ARE YOU AWARE OF OTHER UTILITY ACQUISITIONS THAT HAVE OCCURRED OR BEEN ANNOUNCED IN RECENT YEARS SUCH AS MIDAMERICAN'S ACQUISITION OF PACIFICORP, DUKE'S ACQUISITION OF CINERGY, FPL'S ACQUISITION OF CONSTELLATION (NOW TERMINATED), UNICOM'S ACQUISITION OF PHILADELPHIA ELECTRIC, AEP'S ACQUISITION OF CENTRAL & SOUTHWEST, FLORIDA PROGRESS CORP'S ACQUISITION OF CAROLINA POWER & LIGHT AND EXELON'S ACQUISITION OF PUBLIC SERVICE ENTERPRISE GROUP (NOW TERMINATED)?

A. Yes; I have studied these and about twenty other major utility acquisitions and mergers that have occurred or been announced since 2000.

Q. IN ANY OF THESE WERE THERE PLANS OR EXPECTATIONS TO ESTABLISH DIVIDEND PAYOUTS SUBSTANTIALLY IN EXCESS OF TOTAL EXPECTED EARNINGS AS IN THE CASE HERE?

A. No.

Q. PLEASE EXPLAIN EXHIBIT JW-3.

A. Exhibit JW-3 portrays the return on equity capital (ROE) resulting from BBI's acquisition model and the ways that it plans to manage NWE's finances. Pages 1-3 reflect the acquisition model results without the potential new transmission projects and pages 4-6 reflect model results including these projects. In each instance it is seen that equity returns [redacted]. I should stress that these are after tax returns. Before tax returns are much higher.

Page 1 of Exhibit JW-3 portrays NWE's (opco) after tax earnings as a percentage of consolidated equity. [redacted]. Page 4 presents the same measures including the interstate transmission projects. As indicated on the graphs, equity returns over the 40 year period, 2007-2046, are projected to total [redacted] compared with [redacted] that would have been earned at a 10.75% ROE ([redacted] with transmission). Clearly BBI's plan calls for earnings [redacted].

Pages 2 and 5 are similar to pages 1 and 4 except equity capital in each year is assumed to be 50% of net plant less deferred taxes. These results are very similar to those shown for consolidated equity. Finally, pages 3 and 6 show ROE as a percentage of NWE's opco book equity adjusted for acquisition premium. In this case, because of [redacted].

In short, Exhibit JW-3 shows that BBI's acquisition model anticipates equity returns that are [redacted].

Q. HOW DOES BBI EXPECT NWE TO FUND THE [redacted]?

A. [redacted]

[redacted].

[redacted]

A. Yes. First, it is not entirely clear that these assumptions are consistent with information on net operating loss carry forwards that has been provided by NWE in its September Informational Rate Filing (Docket No. D2006.10.141). In that case NWE was asked to explain an indicated reduction in its NOL's from $258 million at 12/31/04 to $43 million at 12/31/05 (MCC-052). In its response, NWE said, in part:

> The reason why the NOL balance decreased from 12/31/04 to 12/31/05 was due to the adjustment required by federal tax laws for the debt that was cancelled under our bankruptcy. Approximately $570 million of outstanding debt was cancelled due to our bankruptcy. The federal tax laws require that taxpayers either include this amount in current taxable income or reduce tax attributes such as NOL's. We elected to reduce our NOL carry forward.

Whether this answer is consistent with the tax loss asset of [redacted] at 12/31/06 that BBI uses in its model is not clear to me. I have assumed, for the purpose of evaluating BBI's projections, that their indicated FITB attributable to tax losses is correct.

Second, [redacted]. In this case, there may be particularly strong arguments for flow through in that ratepayers may be deprived of the rate base deduction benefit of substantial deferred tax balances that were accrued for taxes expenses which ratepayers paid in past rates but were not paid to the government, and have now apparently been written off by NWE, presumably in recognition of their loss when Touch America sold its utility plant to NWE.

Q. ARE THERE OTHER ELEMENTS THAT HELP EXPLAIN BBI'S [redacted]?

A. Yes. [redacted] of

NWE opco earnings levels is possible without retaining acquisition premium balances in the Company's equity capital, thus forcing ratepayers to subsidize the premium.

[redacted]. But that is so only if acquisition premiums are included in NWE's equity balance. As shown above, if acquisition premiums are properly removed, it is clear that NWE's equity percentage [redacted].

[redacted].

[redacted]

[redacted]. In contrast, Value Line projects capital expenditures of about 2.5 times equity distributions for comparable utilities. Likewise, although comparable utilities project capital expenditures averaging $240 per customer per year, BBI projects [redacted] per customer for NWE. Projected capital expenditures for these comparable companies are summarized in Exhibit JW-4. Clearly the results of BBI's financial model for NWE, [redacted].

VI. RECOMMENDATIONS

Q. REFERRING BACK TO YOUR EARLIER DISCUSSION OF THE FINANCIAL INVESTIGATION CONSENT ORDER AND THE STATEMENT OF FACTORS, PLEASE EXPLAIN THE IMPLICATIONS OF YOUR EVALUATION FOR THE FULFILLMENT OF THE COMMISSION'S REGULATORY OBJECTIVE OF ASSURING ADEQUATE SERVICE AT RATES THAT ARE REASONABLE AND JUST?

A. Looking first at the Financial Investigation Consent Order, the primary problem that I have identified is a critical one: the forty percent floor on the equity portion of the consolidated capital structure for NorthWestern and its affiliates, established by Paragraph C.3.a. of the Order is breached in short order under this proposed acquisition. As discussed at pages 20-24 above, the equity portion of the consolidated capital structure [redacted].

Yet, so far as appears, the post-acquisition NorthWestern would be providing an equity return on debt capital issued by its corporate parent, financing the activities of two new large interstate transmission projects, and engaging in other activities, such as a merchant generating plant lease buy-back, that the Consent Order is intended to prohibit.

More generally, as I stated at the beginning of this testimony, BBI's various strategies for financing the approximately 50 percent premium over book value that it is paying to acquire NorthWestern all involve an increased level of risk, expense or both for Montana consumers. That is fundamentally inconsistent with the provision of adequate service at rates that are reasonable and just.

Q. WHAT DIFFERENCE DOES IT MAKE HOW THE CONSOLIDATED CAPITAL STRUCTURE IS COMPOSED?

A. The short answer is that Paragraph C.3.a. of the Financial Investigation Consent Order was developed to prevent the weakening, through improvident commitments of utility credit to support non-utility investments, of a public utility's ability to maintain adequate service. That is what led NorthWestern to seek bankruptcy protection in September 2003 and it should not be permitted under a different cloak here. In addition, I would add that overleveraged utilities generally see a higher cost of debt, which tends either to raise rates or require some deterioration of the quality of service in order to keep funds available to service excessive debt. These are all impositions on the right of public utility customers under Montana law to adequate service at rates that are reasonable and just.

Q. HOW DOES YOUR EVALUATION INDICATE THAT THE ACQUISITION FARES IN COMPARISON TO THE STATEMENT OF FACTORS?

A. The acquisition does not satisfy the criteria or further the objectives outlined in the most important elements of Commission's October 2004 Statement of Factors. Indeed, with the exception of a commitment to continue "to working with NorthWestern to fully implement the Liberty Consulting infrastructure audit to maintain and enhance system integrity and reliability" (Garland Direct at 13:16-18), BBI's response to the Commission's Statement of Factors is almost entirely rhetorical, rather than substantive. And, even in this regard, BBI's forecast that [redacted] subjects this commitment to question.

As to the Commission's first Factor (Financial Strength and Capability), as I have explained in some detail above, the proposed acquisition does not result in a financially stable, investment grade utility. Rather, it results in the acquisition of NorthWestern by "an investment grade owner of infrastructure assets around the world" (Garland Direct at 12:10). Contrary to the Commission's first Factor, BBI does not propose to "own and operate the system based on rates that do not include recovery of any acquisition price paid above depreciated net book value (an acquisition adjustment) or that do not exceed rate levels which exclude an acquisition adjustment." To the contrary, although it has denied any intention to recover an acquisition adjustment through rates, its financial plans tell a very different story. The sole point of arguable fulfillment of one portion of the Commission's first Factor is Mr. Garland's statement (at p. 12, lines 21-22 of his Direct Testimony) that BBI "intends that NorthWestern will maintain its current funding commitment to the pension plan." Even that statement may be ambiguous as it does not seem to reflect a clear commitment to funding the pension plan at actuarially appropriate levels (and not to doing so beyond 2008).

BBI's statements concerning the Commission's second Factor (Energy Supply) are essentially non-responsive (Garland Direct at 13:3-12). BBI's comments on this Factor furnish no substantive assurance that the objectives underlying the Commission's second Factor will be furthered in any meaningful way -- let alone implemented in such a way as to assure Montana consumers, with respect to default supply of electricity and natural gas, adequate service at rates that are reasonable and just.

As I mentioned earlier, the remaining five factors outlined in the Commission's Statement of Factors ((4) Demonstrable Montana Focus, (5) Utility Focus, (6) Customer Focus, (7) Utility Management Experience, and (8) Effective Functioning in the Montana Constitutional, Statutory and Regulatory Framework) are addressed by BBI in terms that are almost entirely rhetorical, rather than substantive.

In summary, in my opinion the proposed acquisition does not further the objectives of either the Financial Investigation Consent Order or the Commission's Statement of Factors, and does not advance the interests of Montana consumers in adequate service at rates that are reasonable and just.

Q. WHAT ARE YOUR RECOMMENDATIONS TO THE COMMISSION?

A. As I stated earlier in this testimony, I recommend that the Commission adopt seven specific conditions to any authorization it might otherwise grant to the proposed acquisition. These conditions, stated again, are:

1. A strict prohibition against the merged company recovering in retail rates, directly or indirectly, in any manner or by any means, any portion of the approximately $700 million premium over book value proposed to be paid for the acquisition of NorthWestern, unless such recovery is expressly authorized by the Commission upon application demonstrating specific and concrete benefits to Montana consumers resulting from the payment of such premium.

2. None of the transaction and transition costs incurred by BBI and NorthWestern shall be deferred as a regulatory asset for future recovery from ratepayers. These costs should be absorbed exclusively by the shareholders of each of the parties to the acquisition.

3. A requirement for prior Commission authorization for the distribution, directly or indirectly, from NorthWestern to its owners, affiliates or to

stockholders of affiliates any amount in excess of 100 percent of its net earnings from utility operations in any year.

4. A requirement that the merged company use financing that is neither secured by NorthWestern's utility assets nor guaranteed in any manner by its retail utility revenues (i.e., financing that is non-recourse to NorthWestern and its customers) for the development of any capital project having a principal purpose other than the provision of adequate service to retail public utility consumers.

5. Maintaining in place the existing structural and financial measures, intercorporate and affiliate transactions requirements, reporting and disclosure requirements, and infrastructure audit compliance requirements from Order No. 6505e (the Financial Investigation Consent Order), subject to modification of the following provisions:

   a. Changes to the definition of the term "Parent Company" are required throughout Ordering Paragraph C.1 (structural measures) and C.2 (financial measures) in order to ensure that, after consummation of the acquisition, NorthWestern remains the entity vested with title to and control over the public utility assets used to serve Montana consumers;

   b. Ordering Paragraph C.3.a should be modified to reflect a basis for determining consolidated book equity and consolidated total capitalization that is meaningful as a regulatory tool in the context of the post-acquisition corporate structure, and the financial reporting requirements to which that corporate structure will be subject.

6. A requirement for periodic (every two years) submission by NorthWestern of rate informational filings conforming to the requirements of Ordering Paragraph B.1 of Order 6505e (including responding to discovery) for rate review for the initial ten years following the merger, to ensure against excessive rates.

7. A requirement for contemporaneous public filing with the Commission of financial disclosure documents filed by NorthWestern's parent/affiliate BBIL in the Australian Stock Exchange or the Australian Securities and Investments Commission.

Q. ARE THERE ADDITIONAL CONSIDERATIONS WITH RESPECT TO YOUR PROPOSED CONDITIONS?

A. Yes, there are. First, as to the risks of the [redacted], I would recommend that the Commission state an intent to require that these funds be raised through project financing that is dependent solely on project revenues with no recourse to utility ratepayers. This is a requirement that should be placed on such financing whether or not BBI acquires NWE. As I stated above, it appears to me that NWE has already structured its FERC rate filing for these projects in a way that will accommodate such financing.

Second, as to BBI's projected [redacted], it is clear that NWE and its ratepayers would be better off with NWE as a stand-alone company than as a subsidiary of BBI with [redacted]. Without question, NWE will be far more financially capable to carry out its operations and fund essential capital maintenance and growth without [redacted]. Just as surely, NWE would not even remotely expect to [redacted] and there would not be imperatives to include acquisition premium financing in utility rate requirements [redacted].

That said, I recommend that if the Commission is nevertheless inclined to approve the acquisition that it explicitly state that such approval does not in any way endorse or signify any approval or agreement with BBI's [redacted]. In so stating, the Commission should expressly indicate that the NWE opco long term earnings levels indicated in the acquisition model [redacted]. The Commission should further observe that the [redacted] and that any approval of the merger provides no indication or agreement that they are realistic, sustainable or likely to be approved. The Commission should also order that in any year the

Company intends to make an equity distribution that exceeds 100% of net earnings it must first make a filing justifying such distribution and obtain the Commission's prior approval therefore.

Third, the Commission should advise the Company that [redacted], NWE's allowed rate of return on rate base will be computed based on a capital structure that excludes equity acquisition premiums or other types of "goodwill" in excess of net plant value and that ratepayers will not be required to compensate NWE or its owners for any acquisition premiums either directly or indirectly (i.e., by including such premium amounts in utility equity capital).

Finally, the Commission should reaffirm its Order that neither the consolidated capital structure nor NWE's own corporate capital structure (adjusted to remove acquisition premiums) should be permitted to decline to less than 40% and that sufficient earnings should be retained over time to meet potential capital investment needs and to support investment grade security ratings at both the operating company and consolidated levels.

Q. DOES THIS COMPLETE YOUR PREPARED DIRECT TESTIMONY AT THIS TIME?

A. Yes; it does.

Projected NWE Cash Distribution to Equity Owners

(shown as a percentage of total after tax earnings)

2007-2023 excluding interstate tranmission projects

Protected Information Redacted

Source: BBI Acquisition Model for NWE.

Projected NWE Cash Distribution to Equity Owners

(shown as a percentage of total after tax earnings capped at a 10.75% return on consolidated equity)

2007-2046 excluding interstate tranmission projects

Protected Information Redacted

Source: BBI Acquisition Model for NWE.

Projected NWE Cash Distribution to Equity Owners

(shown as a percentage of total after tax earnings capped at a 10.75% return on equity funded rate base[1/])

2007-2046 excluding interstate tranmission projects

Protected Information Redacted

Source: BBI Acquisition Model for NWE.

Projected NWE Cash Distribution to Equity Owners

(shown as a percentage of total after tax earnings capped at a 10.75% return on OpCo equity[1/])

2007-2046 excluding interstate tranmission projects

Protected Information Redacted

Source: BBI Acquisition Model for NWE.

Projected NWE Cash Distribution to Equity Owners

(shown as a percentage of total after tax earnings)

2007-2023 including interstate tranmission projects

Protected Information Redacted

Source: BBI Acquisition Model for NWE.

Projected NWE Cash Distribution to Equity Owners

(shown as a percentage of total after tax earnings capped at a 10.75% return on consolidated equity)

2007-2046 including interstate tranmission projects

Protected Information Redacted

Source: BBI Acquisition Model for NWE.

Projected NWE Cash Distribution to Equity Owners

(shown as a percentage of total after tax earnings capped at a 10.75% return on equity funded rate base[1/])

2007-2046 including interstate tranmission projects

Protected Information Redacted

Source: BBI Acquisition Model for NWE.

Projected NWE Cash Distribution to Equity Owners

(shown as a percentage of total after tax earnings capped at a 10.75% return on OpCo equity[1/])

2007-2046 including interstate tranmission projects

Protected Information Redacted

Source: BBI Acquisition Model for NWE.

Projected Cash Distributions to Equity Owners for Comparable Companies
2009-2011

Company	Projected Earnings	Projected Payout	% Payout
CH Energy	48,750,000	33,000,000	67.69%
Consolidated Edison	802,150,000	625,940,000	78.03%
Duquesne Light	135,000,000	90,000,000	66.67%
Energy East	295,500,000	206,850,000	70.00%
NSTAR	293,727,500	176,236,500	60.00%
PEPCO	441,000,000	235,200,000	53.33%
UIL Holdings	49,920,000	44,288,000	88.72%
Northeast Utilities	268,940,000	147,126,000	54.71%
Centerpoint Energy	420,000,000	268,800,000	64.00%
Sempra Energy	1,287,250,000	368,560,000	28.63%
Average	**$404,223,750**	**$219,600,050**	**63.18%**

Source: Value Line Investment Survey

Projected NWE Return on Net Plant

2007-2030 excluding interstate tranmission projects.

Protected Information Redacted

Source: BBI Acquisition Model for NWE.

Projected NWE Return on Net Plant

2007-2030 including interstate tranmission projects.

Protected Information Redacted

Source: BBI Acquisition Model for NWE.

Projected Return on Net Plant for Comparable Companies
2009-2011

Company	Projected Net Plant	Projected Return	% Return
CH Energy	975,000,000	57,750,000	5.92%
Consolidated Edison	21,600,000,000	1,059,900,000	4.91%
Duquesne Light	1,925,000,000	184,000,000	9.56%
Energy East	6,175,000,000	385,000,000	6.23%
NSTAR	4,125,000,000	353,250,000	8.56%
PEPCO	9,180,000,000	552,500,000	6.02%
UIL Holdings	755,000,000	60,225,000	7.98%
Northeast Utilities	9,190,000,000	357,775,000	3.89%
Centerpoint Energy	9,900,000,000	624,000,000	6.30%
Sempra Energy	16,600,000,000	1,538,500,000	9.27%
Average	**$8,042,500,000**	**$517,290,000**	**6.86%**

Source: Value Line Investment Survey.

Projected NWE Return on Consolidated Equity ("ROE")

2007-2046 excluding interstate transmission projects.

Protected Information Redacted

Source: BBI Acquisition Model for NWE.

Projected NWE Return on Equity Funded Rate Base[1/]

2007-2046 excluding interstate transmission projects.

Protected Information Redacted

Source: BBI Acquisition Model for NWE.

Projected NWE Return on OpCo Equity[1/]

2007-2046 excluding interstate tranmission projects

Protected Information Redacted

Source: BBI Acquisition Model for NWE.

Projected NWE Return on Consolidated Equity ("ROE")

2007-2046 including interstate transmission projects.

Protected Information Redacted

Source: BBI Acquisition Model for NWE.

Projected NWE Return on Equity Funded Rate Base[1/]

2007-2046 including interstate transmission projects.

Protected Information Redacted

Source: BBI Acquisition Model for NWE.

Projected NWE Return on OpCo Equity[1/]

2007-2046 including interstate transmission projects.

Protected Information Redacted

Source: BBI Acquisition Model for NWE.

Projected Capital Expenditure per Customer

2007-2046

excluding NWE interstate transmission projects

($/customer)

Protected Information Redacted

Comparable Companies[2/]
277.29
239.05
239.05
239.05

[2/] *per 2006 customers as projected by Value Line Investment Survey*

[1/] *BBI Acquisition Model for NWE.*

Projected Capital Expenditure per Customer

2007-2046

including NWE interstate transmission projects

($/customer)

Protected Information Redacted

[1] *BBI Acquisition Model for NWE.*

Comparable Companies[2]
277.29
239.05
239.05
239.05

[2] *per 2006 customers as projected by Value Line Investment Survey*

Projected Capital Expenditure % of Equity Payout

2007-2046

excluding NWE interstate transmission projects

Protected Information Redacted

Comparable Companies[2/]
341.01%
260.02%
260.02%
260.02%

[2/] *Value Line Investment Survey.*

[1/] *BBI Acquisition Model for NWE.*

Projected Capital Expenditure % of Equity Payout

2007-2046
including NWE interstate transmission projects

Protected Information Redacted

Comparable Companies[2/]
341.01%
260.02%
260.02%
260.02%

[2/] *Value Line Investment Survey.*

[1/] *BBI Acquisition Model for NWE.*

Projected NWE Tax Payments and Tax Expenses
2007-2030 excluding interstate transmission projects
($million)

Protected Information Redacted

Source: BBI Acquisition Model for NWE.

Projected NWE Tax Payments and Tax Expenses
2007-2030 including interstate transmission projects
($million)

Protected Information Redacted

Source: BBI Acquisition Model for NWE.

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER OF An Investigation of NorthWestern Energy's Financial and Related Transactions with NorthWestern Corporation, its Affiliates and Creditors That May Impair Its Financial Solvency and Public Utility Service Obligations	)	UTILITY DIVISION DOCKET NO. D2003.8.109

CONSENT ORDER

Background

1. On August 13, 2003, the Montana Consumer Counsel ("Consumer Counsel") petitioned the Montana Public Service Commission ("Commission") to open a certain financial investigation into NorthWestern Energy ("NWE"), a division of NorthWestern Corporation ("NorthWestern"). Consumer Counsel's petition requested that the Commission, among other things; (a) investigate the finances, corporate structure, capital structure, cash management practices, and inter-affiliate and third-party financial transactions of NorthWestern; and (b) develop and enforce appropriate regulatory controls on the foregoing (and other matters) as necessary to ensure that various inter-affiliate relationships, transfers, and transactions between NorthWestern and the electric and natural gas utility operations lodged in its NorthWestern Energy division are not operating, and do not operate in the future, to prejudice the ability of NWE to furnish reasonably adequate service and facilities at reasonable and just charges, as required by § 69-3-201, MCA.

2. Consumer Counsel's petition also requested that the Commission consider the adoption of regulatory requirements, controls and measures to protect the public interest in reliable, safe and adequate utility service at just and reasonable rates, including:

a. the reversal of such inter-company and inter-affiliate transactions involving NWE or assets of NWE as the Commission may find to have operated, or to be operating, to the detriment of NWE's ability to provide safe, reliable and adequate utility service at just and reasonable rates;

b. the incorporation of NWE as a separate, utility-only subsidiary of NorthWestern, in order to facilitate the Commission's oversight of NWE's operations and the prevention of future dissipation of assets dedicated to the public convenience and necessity;

c. the adoption of specific cost allocation processes, procedures and manuals for use by NWE;

d. the adoption of reporting requirements applicable to NWE's operations;

e. the adoption of principles governing current and future financing involving assets of NWE, including the following principles at a minimum:

(1) authorization to issue debt that is secured (i.e., backed) by utility assets must use the proceeds of the debt for utility purposes only;

(2) if any utility assets that are pledged or encumbered to secure debt issuances are divested or 'spun off,' the debt must 'follow' the assets and be divested or "spun off" as well;

(3) if utility assets financed by unsecured debt are divested or "spun off" to another entity, then a proportionate share of the debt also must be divested or "spun off"; and

(4) If assets financed with unsecured debt are divested or "spun off," the associated unsecured debt must follow those assets. Specifically, if any of the proceeds from unsecured debt are used for non-utility purposes, the debt likewise must "follow" the non-utility assets and if the non-utility assets are divested or "spun off" then a proportionate share of the debt must follow the associated non-utility assets by being divested or "spun off" as well. The term "divested" in this context includes moving assets to both affiliated and non-affiliated corporations; and

f. Such other and further measures as the Commission may find to be necessary, appropriate, and within its statutory authority in order to ensure the current and future provision of safe, adequate and reliable service by NWE at rates that are reasonable and just.

3. On August 22, 2003, the Commission issued Order No. 6505 initiating this proceeding in Docket D2003.8.109 (the "Financial Investigation").

4. On or about September 5, 2003, NWE, along with NorthWestern, responded to the initial Order in the Financial Investigation by providing some narrative answers and some supporting documents to the information reporting requirements set forth in Attachment 1 to Order No. 6505.

5. On September 14, 2003, NorthWestern filed its petition for relief under Chapter 11 of the United States Bankruptcy Code (11 U.S.C. §§ 101 *et seq.*, 1101-1166) in the United States Bankruptcy Court for the District of Delaware styled as *In re NorthWestern Corporation,* Chapter 11 Case No. 03-12872 (CGC). The bankruptcy filing, a disagreement among NorthWestern, Consumer Counsel and the Commission over the legal effect of the bankruptcy filing on this docket, and the unusually expedited procedural schedule established by Order No. 6505, caused a *de facto* suspension of the Financial Investigation after

September 14, 2003. In addition, the Commission informally determined to alter its initial schedule for the Financial Investigation to accommodate the workload on NorthWestern's staff in administering the initial stages of NorthWestern's bankruptcy proceeding.

6. On December 30, 2003, the Commission issued its Supplemental Order Initiating Investigation No. 6505b (the "Supplemental Order") which modified the scope of the Financial Investigation docket and the information production requirements set forth in Attachment 1 thereto, in light of NorthWestern's bankruptcy proceeding.

7. On or about January 6, 2004, the Commission, issued Order No. 6505c which established a procedural schedule and procedural requirements for the Financial Investigation (the "Procedural Order"). On or about January 15, 2004, NorthWestern provided information to the Commission with copies to the Consumer Counsel in response to the information sought in the Supplemental Order.

8. On March 3, 2004, Consumer Counsel submitted the pre-filed direct testimony of Dr. John W. Wilson. On April 23, 2004, NorthWestern submitted the pre-filed answering testimony of Brian Bird, George Boyles, Patrick Corcoran, and Michael Hanson. Under the procedural schedule established by Order No. 6505c, this proceeding was scheduled to commence hearings on June 16, 2004, and the parties had been engaged in discovery (including the litigation of a discovery dispute) in preparation for that hearing.

9. At all times following the initiation of its Chapter 11 proceeding, NorthWestern asserted the position that the Financial Investigation was stayed by operation of the automatic stay pursuant to Section 362 of the Bankruptcy Code. Whenever NorthWestern provided information in response to the Procedural Order or otherwise made filings in the Financial Investigation, it all times reserved and preserved the right to argue

that the Financial Investigation was stayed by NorthWestern's bankruptcy filing. At all times in response, the Commission and the Consumer Counsel contested and disagreed with NorthWestern's assertions, and have taken the position that the Financial Investigation was not stayed as a result of NorthWestern's bankruptcy proceeding.

10. Beginning in about January 2004, the Consumer Counsel and representatives of the Commission began an informal dialogue with NorthWestern's representatives in an effort to determine whether a consensual resolution of this proceeding and the Consumer Counsel's and the Commission's issues with respect to NorthWestern's bankruptcy proceeding could be developed. That dialogue has led to the Stipulation and Settlement Agreement dated July, 2004, (a true and correct copy attached hereto as Exhibit 1) by and among the Commission, the Consumer Counsel and NorthWestern, with the approval of the Commission, and to resolution of this Financial Investigation docket by entry of this Consent Order, without the need for findings of fact or an administrative record.

11. Capitalized terms used herein and not otherwise defined shall be as defined in the Settlement Agreement.

CONCLUSIONS OF LAW

1. NorthWestern Corporation is a public utility subject to the Commission's jurisdiction. § 69-3-101, MCA.

2. Public utilities must provide adequate service at just and reasonable charges. § 69-3-201, MCA.

3. The Commission must ensure that public utilities are meeting their public service obligations, and in so doing, the Commission has full power of supervision, regulation and control of such public utilities, and the power to do all things necessary and

convenient in the exercise of these powers as provided by applicable Montana law. §§ 69-1-102, 69-3-102, 103, 106, and 110, MCA.

4. The stipulation and agreement of Consumer Counsel and NorthWestern to the resolution of this proceeding by entry of this Consent Order is acceptable to, and approved by, the Commission as consistent with and in furtherance of the public interest. The Commission's entry of this Consent Order resolves all issues that were raised, or that could have been raised, in the Financial Investigation.

ORDER

A. Approval of Stipulation and Settlement Agreement

1. It is hereby Ordered that the Stipulation and Settlement Agreement dated July 8, 2004, a true and correct copy being attached hereto as Exhibit 1 ("Stipulation and Settlement Agreement") is approved and accepted by the Commission and incorporated in this Order by reference and made a part hereof, and shall be binding upon the Parties thereto (including the Commission) with respect to all matters referenced in the Stipulation and Settlement Agreement. Capitalized terms used herein and not otherwise defined shall be as defined in the Stipulation and Settlement Agreement.

2. The terms, conditions and the provisions of the Stipulation and Settlement Agreement relating to these proceedings in D2003.8.109 are hereby approved as follows:

B. Rate Review.

1. No later than September 30, 2006, based on a 2005 test year, NorthWestern shall file complete documents complying with the minimum electric and gas rate case filing standards provided in ARM 38.5.106 through 38.5.195, including any additional documentation required for interim electric and gas rate adjustments as provided in ARM

38.5.501 through 38.5.507, whether or not an interim adjustment is or has been sought. Following such filing, NorthWestern shall respond to all reasonable discovery and data requests: (i) in accordance with the requirements of ARM 38.2.3301 through 38.2.3305 and the Montana Rules of Civil Procedure as thereby made applicable; and (ii) in accordance with any procedural schedule established by the Commission in connection with such filing.

2. Notwithstanding any practice or provision to the contrary in the Commission's Rules, the burdens of proof and persuasion in the rate proceeding initiated by NorthWestern's filing set forth in the immediately preceding paragraph 1 shall be borne by any party that is seeking to change rates from those approved by the then currently effective Commission order.

3. The Commission will not initiate on its motion, or entertain a petition by Consumer Counsel to initiate, any proceeding to review of NorthWestern's transmission and distribution tariffed rates and charges at any time prior to September 30, 2006.

C. Structural and Financial Separation of Public Utility Assets, Facilities, and Operations from Risks of Non-Utility Ventures.

From and after the date of entry of this Consent Order, NorthWestern will be subject to the following regulatory controls to separate and insulate the Public Utility's assets, facilities, and operations from risks that may be associated with non-utility ventures in which NorthWestern is or may become engaged from time to time. These controls are commonly known as, and are referenced in the Parties' Agreement in Principle as, "ring fencing" measures -- consisting of structural measures, financial measures, and affiliate and inter-corporate measures.

1. **Structural Measures.**

a. NorthWestern shall structure and maintain the ownership and control of its Public Utility assets, facilities, and operations in the ultimate parent corporation (the "parent") of whatever corporate structure NorthWestern may adopt, now or hereafter, without the intervention of any direct or indirect ownership or control of such Public Utility assets, facilities, or operations by any subsidiary or affiliate.

b. NorthWestern shall provide written notice to the Commission and the Consumer Counsel at least forty-five (45) days in advance of the earlier of an irrevocable commitment or undertaking on the part of NorthWestern to transfer, merge, sell, lease, encumber, or otherwise enter into any disposition transaction involving its Montana Public Utility assets or facilities having either a net book value or transaction value (whichever is greater), as reflected in NorthWestern's records in accordance with the Uniform System of Accounts (18 C.F.R. Part 101), of not less than five million dollars ($5,000,000.00) per transaction. The provision of such notice in accordance with this Consent Order shall not be deemed or construed to constitute an admission or acknowledgement by NorthWestern that the Commission has jurisdiction over any such disposition under Montana law, and NorthWestern reserves the right to contend to the contrary in any forum or proceeding in which such issue may arise.

2. **Financial Measures.**

After the date of entry of this Consent Order, NorthWestern shall be subject to the following restrictions and requirements:

a. NorthWestern shall at all times hold all owned or operated Public Utility assets at the Parent Company, separate and segregated from the ownership, risks and operations of any subsidiaries and any affiliates that have or hold assets other than Public Utility assets. In addition, finances of any public utility owned or operated by NorthWestern shall at all times be held separate and segregated from the ownership, risks and operations of any subsidiaries and any affiliates that have or hold assets other than Public Utility assets.

b. Debt at the Parent Company will consist only of public utility debt, whether secured or unsecured, and the proceeds of all such debt will be used solely to fund activities of the Parent Company's public utility business. This principle shall control in the event of any conflict between this paragraph and any other provision of this Consent Order.

c. If Public Utility assets that are pledged or encumbered to secure debt are divested or "spun off," the debt must follow the assets and be divested or "spun off" to the same extent as the assets.

d. If Public Utility assets financed by unsecured debt are divested or "spun off," then a proportionate share (to the same extent as the assets) of the debt also must be divested or "spun off."

e. If any of the proceeds from unsecured debt are used for purposes other than Public Utility purposes, the debt likewise must follow the assets other than Public Utility assets and if such assets are divested or "spun off" then a proportionate share (to the same extent as the assets) of the debt must be divested or "spun off."

f. Other than as allowed by the Limited Investment Basket Caps described below in subparagraphs C3.b. through d. below, the Parent Company will not extend credit to any of its subsidiaries or affiliates, will not pledge Public Utility assets as collateral for the use or benefit of any of its subsidiaries or affiliates and will not guarantee any debt of any of its subsidiaries or affiliates.

g. All debt associated with assets other than public utility assets or activities will be held at or by the subsidiaries or affiliates and will be non-recourse to the Parent Company.

h. The Parent Company will take all measures necessary to ensure that it will have its own independent corporate credit rating.

3. <u>Affiliate and Inter-Corporate Transactions.</u>

a. NorthWestern shall not provide loans, guarantees, advances, equity investments, or working capital to its subsidiaries or affiliates, except in accordance with the Limited Investment Basket described in subparagraph C.3.b below. Provided that the ratio of NorthWestern's consolidated total book equity as a ratio to its consolidated total capitalization is at no time less than forty (40%) percent, NorthWestern will be permitted to provide loans, guarantees, advances, equity investments, and working capital to its subsidiaries and affiliates in an aggregate amount (the Limited Investment Basket Caps) defined in subparagraph C.3.b. below. For the purposes of this forty (40%) percent calculation, the NorthWestern's consolidated book equity and consolidated total capitalization shall be as reported by NorthWestern in its quarterly and year-end financial statements filed with the Securities and Exchange Commission in SEC Forms 10-Q and 10-K, respectively. Such ratio shall be measured on a quarterly basis beginning with the first fiscal quarter ending after the Effective Date. As used herein "total capitalization" shall include NorthWestern's secured and unsecured debt, plus capital leases, plus consolidated book equity as presented in NorthWestern's published financial statements. The equity ratio calculation described above shall not have any precedential basis for determining the equity component of NorthWestern's capital structure for utility rate making purposes.

b. NorthWestern may, pursuant to this Consent Order, provide loans, guarantees, advances, equity investments, and working capital to its subsidiaries and affiliates only in amounts not to exceed the aggregate amounts set forth below, in accordance with the threshold credit ratings also set forth and in accordance with the Limited Investment Basket Caps. The Limited Investment Basket Cap amounts are inclusive of, and not in addition to, those amounts NorthWestern is committed to provide as of the date of this Agreement: (1) in accordance with the Colstrip 4 leases and operating agreements; (2) as intercompany support for Clark Fork and Blackfoot, LLC, in connection with the Milltown Dam and the corresponding Environmental Liabilities Support Agreement and Operating Support Agreement ; (3) as reasonably required to preserve the present assets of Montana Megawatts I, LLC; and (4) for the unregulated South Dakota and Nebraska gas purchasing operations provided, however, that if any of the aforementioned obligations (1) through (4) are eliminated or reduced, or if any of the aforementioned assets are sold or otherwise disposed of, the Limited Investment Basket Cap will be automatically reduced by an amount representing fifty percent (50%) of the average maximum balance outstanding during each of the preceding twelve (12) months, as the case may be, by NorthWestern with respect to the aforementioned obligations (1) through (4) which are eliminated or reduced; provided, however, that the Limited Investment Basket Caps shall not be reduced to less than forty-five million dollars ($45,000,000) at all times. The aggregate amounts of the Limited Investment Basket Caps are defined as the following limits and the related corporate credit rating levels:

Criterion	Limited Investment Basket Cap
• Upon the Effective Date:	$60 million
• During any such time that NorthWestern has credit ratings of at least BBB- (Standard & Poor's) and at least Baa3 (Moody's Investors Service):	$75 million
• During any such time that NorthWestern has credit ratings of at least BBB (Standard & Poor's) and at least Baa2 (Moody's Investors Service):	$90 million
• Upon attainment of credit ratings of at least BBB+ (Standard & Poor's) and at least Baa1 (Moody's Investors Service), but in no event sooner than forty-two (42) months after the Effective Date:	No limit

c. If NorthWestern's corporate credit rating is downgraded by either Standard and Poor's or Moody's Investors Service such that NorthWestern no longer meets the criterion for the Limited Investment Basket Cap that was in effect immediately prior to the downgrade, as set forth in subparagraph C.3.b. above (the "Pre-Downgrade Limited Investment Basket Cap"), then, notwithstanding anything to the contrary in this Consent

Order, the Limited Investment Basket Cap on the date of such downgrade automatically shall decrease to the Limited Investment Basket Caps that applies to NorthWestern's credit ratings after such downgrade, as set forth in subparagraph C.3.b. above (the "Post-Downgrade Limited Investment Basket Cap"), and NorthWestern shall proceed as expeditiously as possible to reduce the aggregate amount of any and all loans, guarantees, advances, equity investments, and working capital to its subsidiaries and affiliates to an amount no greater than the applicable Post-Downgrade Limited Investment Basket Cap. If the aggregate amount of any and all loans, guarantees, advances, equity investments, and working capital extended to its subsidiaries and affiliates exceeds the applicable Post-Downgrade Limited Investment Basket Cap on the date ninety (90) days subsequent to the effective date of the downgrade, NorthWestern shall implement whatever course(s) of action the Commission deems necessary and, after Notice and a Hearing orders, to decrease the aggregate amount of any and all loans, guarantees, advances, equity investments, and working capital to NorthWestern's subsidiaries and affiliates to an amount no greater than the Post-Downgrade Limited Investment Basket Cap. Any such order shall be effective twenty (20) days after filing pursuant to 69-3-401, M.C.A., subject to NorthWestern's right to petition the appropriate Montana state court pursuant to 69-3-403, M.C.A. for injunctive relief pending any judicial review.

d. In the event that the ratio of NorthWestern's consolidated book equity to its consolidated capitalization at any time falls below forty percent (40%), then, notwithstanding anything to the contrary in the Consent Order, the Limited Investment Basket Cap on that date automatically shall decrease to sixty million dollars ($60,000,000) (or such reduced amount as is appropriate based on the elimination, reduction, or disposition of assets described in subparagraph C.3.c., above) and NorthWestern shall proceed as expeditiously as possible to reduce the aggregate amount of any and all loans, guarantees, advances, equity investments, and working capital to its subsidiaries and affiliates to an amount no greater than sixty million dollars ($60,000,000) (or such reduced amount as is appropriate based on the elimination, reduction, or disposition of assets described in paragraph C.3.c. above). If the aggregate amount of any and all loans, guarantees, advances, equity investments, and working capital extended to its subsidiaries and affiliates exceeds sixty million dollars ($60,000,000) (or such reduced amount as is appropriate based on the elimination, reduction, or disposition of assets described in paragraph C.3.c., above) on the date ninety (90) days subsequent to the date on which the ratio of NorthWestern's consolidated book equity to is consolidated capitalization/assets falls below forty percent (40%), NorthWestern shall implement whatever course(s) of action the Commission deems necessary and, after Notice and a Hearing orders, to decrease the aggregate amount of any and all loans, guarantees, advances, equity investments, and working capital to NorthWestern's subsidiaries and affiliates to an amount no greater than sixty million dollars ($60,000,000) (or such reduced amount as is appropriate based on the elimination, reduction, or disposition of assets described in paragraph C.3.c., above). Any such order shall be effective twenty (20) days after filing pursuant to 69-3-401, M.C.A., subject to NorthWestern's right to petition the appropriate Montana state court pursuant to 69-3-403, M.C.A. for injunctive relief pending any judicial review.

e. NorthWestern shall not enter into any contract with a subsidiary or an affiliate of NorthWestern where any part of the costs of such contract are, or are expected or requested by NorthWestern to be, recovered through utility rates paid by Montana ratepayers, unless:

(1) NorthWestern first shall have made application to the Commission upon full disclosure of all material facts for authorization to enter into such contract; and

(2) The Commission, after Notice and a Hearing, shall have authorized NorthWestern to enter into such contract.

f. NorthWestern shall maintain separate books and accounting records for each Public Utility operating within its corporate structure and for each direct or indirect subsidiary or affiliate of NorthWestern.

g. NorthWestern shall permit the Commission to audit the books and records of its Public Utility operations and, in addition, those of each direct or indirect subsidiary and affiliate, and NorthWestern shall provide the Commission and its staff full access to all such books and records upon reasonable notice.

h. NorthWestern shall provide, subject to SEC disclosure limitations (which, if invoked as grounds for non-reporting, shall be documented by reference to the applicable SEC rule or regulation and the basis for its application in the circumstances), quarterly reports of all transactions between the parent and any subsidiary or affiliate.

i. NorthWestern shall maintain Montana Universal Service Benefit funds collected by it in a separate and segregated interest-bearing bank account dedicated exclusively to the handling of such funds, and it shall account for such funds as trust funds as provided for under Montana law.

D. <u>Reporting and Disclosure Requirements.</u>

1. NorthWestern shall provide to the Commission staff a complete and detailed explanation of all accounting systems and practices in use by NorthWestern and its direct and indirect subsidiaries and affiliates, and it shall provide the Commission and Consumer Counsel with current copies of all accounting manuals and practices in use by NorthWestern and its direct and indirect subsidiaries and affiliates. To the extent that the accounting manuals and practices contain proprietary and commercially sensitive information that would qualify as a trade secret under Montana law, NorthWestern may apply to the Commission pursuant to Mont. Code Ann. § 69-3-105 for a protective order using the processes and criteria outlined in *Great Falls Tribune v. Montana Public Service Commission,* 319 Mont. 38, ¶¶ 55-57, 82 P.3d 876 (2003), or applicable Commission administrative rules.

2. NorthWestern acknowledges and reaffirms its obligation to respond to reasonable requests by the Commission, its staff, or the Consumer Counsel, pursuant to Mont. Code Ann. §§ 69-3-102, 69-3-106, and 69-2-203, and shall respond to all such requests in a timely and complete manner.

E. <u>Transmission and Distribution Infrastructure Audit</u>.

1. NorthWestern has engaged voluntarily Liberty Consulting ("Auditor") to audit and make recommendations concerning the state of NorthWestern's utility transmission and distribution infrastructure within Montana (the "Infrastructure Audit"). NorthWestern shall:

a. Within three (3) business days of receipt, submit the Auditor's final report or reports containing the results and recommendations of the Infrastructure Audit to the Commission;

b. Cause the Auditor to present the findings and recommendations of the Infrastructure Audit to the Commission at a public meeting within fifteen (15) days of receipt by NorthWestern of the final report with respect to the Infrastructure Audit; provided, however, that on or before August 1, 2004 NorthWestern shall submit a report (whether final or not) containing the results of the Infrastructure Audit to the Commission; and

c. Coordinate and cooperate with the Commission and the Consumer Counsel to implement appropriate recommendations of the Infrastructure Audit.

2. The Financial Investigation docket will remain open for the sole purpose of maintaining a procedural forum for the entry of any orders by the Commission for the implementation of appropriate Infrastructure Audit recommendations agreed upon by the Parties.

3. Notwithstanding paragraph E.1., above if the Parties cannot agree on the implementation of the Infrastructure Audit recommendations, then the Commission, either on its own motion or upon the petition of the Consumer Counsel, may commence a new

proceeding to compel the implementation of any Infrastructure Audit recommendations not agreed to by the Parties. If any such motion or petition is filed, NorthWestern reserves all rights to oppose implementation of any recommendation of the Infrastructure Audit not agreed upon by the Parties.

F. Binding on Successors and Assigns.

Upon the entry of this Consent Order and the Stipulation and Settlement Agreement becoming effective pursuant to paragraph 8 thereof, this Consent Order and the Stipulation and Settlement Agreement and each of their respective provisions will be binding upon the reorganized NorthWestern, its affiliates, parents, subsidiaries, officers, directors, shareholders, agents, representatives, attorneys, successors and, assigns, specifically including any purchaser or other transferee, directly or indirectly (whether by purchase, merger, consolidation or otherwise), of all or a material portion of the reorganized NorthWestern's Public Utility assets. Upon the entry of this Consent Order and the Stipulation and Settlement Agreement becoming effective pursuant to paragraph 8 thereof, this Consent Order and the Stipulation and Settlement Agreement will be binding upon the Commission, the Consumer Counsel, their successors, officers, directors, agents, representatives, and attorneys. This Consent Order and the Stipulation and Settlement Agreement, address discrete components on which future revenue requirements may be based, but it does not, and does not purport to, set rates with respect to the Debtor's Montana Public Utility assets.

G. Construction.

This Consent Order was drafted with the assistance and input of counsel for all Parties. This Consent Order shall not be construed in favor of or against any Party based on the identity or affiliation of its draftspersons.

H. Continuing Jurisdiction.

The Commission shall have exclusive jurisdiction, on its own or on the application of the Parties pursuant to Title 69, Mont. Code Ann., to enforce the terms of this Consent Order and the Stipulation and Settlement Agreement. Nothing in this Consent Order or Stipulation and Settlement Agreement shall be construed in any way to expand, diminish or limit the Commission's jurisdiction under state law. The Bankruptcy Court also shall have jurisdiction to enforce the terms of the Stipulation and Settlement Agreement; provided, however, the Commission and the Consumer Counsel do not consent, by entering into the Stipulation and Settlement Agreement and/or the entry of this Consent Order, to the jurisdiction of the Bankruptcy Court except to the extent necessary to obtain Bankruptcy Court approval of the Stipulation and Settlement Agreement and, if necessary, enforcement of the Stipulation and Settlement Agreement's terms.

I. Precedential Effect.

This Consent Order does not establish any precedent that can be used by any Party to bind any other Party in any subsequent proceeding, or otherwise, except a proceeding or action arising out of or directly related to this Consent Order or the Stipulation and Settlement Agreement.

J. Relationship to Order No. 6474a.

To the extent of any inconsistency between this Consent Order and that certain Order No. 6474a issued by the Commission on or about January 24, 2003 in Docket No. 2002.12.159 styled as *In the Matter of the Application of NorthWestern Corporation for Authority to Consummate a Credit Agreement and Issue $390 Million in Principle Amount of Secured Long-Term Notes in the Form of First Mortgage Bonds* the provisions of this Consent Order shall control.

K. Enforcement.

In the event and to the extent necessary for its full implementation in accordance with its terms, this Consent Order shall be enforceable by the Commission in the same manner as any other order of the Commission, including as provided in § 69-3-110, MCA.

L. Modification.

NorthWestern may at any time make application to the Commission for relief from, or for modification of, any provision of this Consent Order and the Stipulation and Settlement Agreement, and shall accompany such application with appropriate evidentiary and legal support for whatever relief or modification it may seek in such application. The Commission may dispose of any such application in the manner which appropriately effectuates the purposes and policies of § 69-3-201, MCA and the purposes of this Consent Order.

M. Closing of Docket.

Except for the limited purposes of (a) paragraph E.2. of this Consent Order and paragraph 4(d) of the Stipulation and Settlement Agreement, and (b) to enforce the terms of this Consent Order and the Stipulation and Settlement Agreement, upon the entry and effectiveness of this Consent Order this Docket No. D2003.8.109, generally referred to as the Financial Investigation Docket, shall be deemed, and hereby is, closed.

DONE IN OPEN SESSION at Helena, Montana, this ___ day of ______, 2004, by a vote of _-_.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

BOB ROWE, Chairman

TOM SCHNEIDER, Vice Chairman

GREG JERGESON, Commissioner

MATT BRAINARD, Commissioner

JAY STOVALL, Commissioner

ATTEST:
Commission Secretary
(SEAL)

Exhibit No. JW-7

Key attributes: Distributions paid from operating cash flows, not from capital restructuring initiatives

Cash Flow from operations - half year ended 31 Dec 2005